IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01 .08.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.25398 of 2007

V.Sridhar ... Petitioner

Vs.

1. The Forest Range Officer,
Odugathur Range,
Odugathur 632 103,
Vellore District.

2. The District Forest Officer,
Vellore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to release to the petitioner, his Tata Sumo (Spacio) car, belonging to him and bearing Regn.No.AP-03/G-4567 (Engine No.497 SP 26 GZZ 750120 Chassis No.421055 GZZ 916177) which was stolen on 17/18.03.2007 night between 01.00 A.M., and 05.30 A.M., at Chittoor, Andra Pradesh and which was later on sized on 23.03.2007 (with implanted Regn.No.TN-09-L-7707) by Forest Range Officer, Odugathur Range, in connection with S.T.O.R.No.79/2007 on the file of the Judicial Magaistrate No.III, Vellore.

For Petitioner : Mr.T.Mohan for Mr.M.Ravi
For Respondent : Mr.K.Rajasekar,
Government Advocate

ORDER

Writ petition is for a Mandamus directing the first respondent to release the Tata Sumo (Spacio) car, bearing Regn.No.AP-03/G-4567 (Engine No.497 SP 26 GZZ 750120 Chassis No.421055 GZZ 916177) belonging to the petitioner, which was stolen on 17/18.03.2007 night between 01.00 A.M., and 05.30 A.M., at Chittoor, Andra Pradesh and the same was later on seized on 23.03.2007 (with implanted Regn.No.TN-09-L-7707) by the Forest Range Officer, Odugathur Range, in connection with S.T.O.R.No.79/2007 on the file of the Judicial Magaistrate No.III, Vellore.

2. The petitioner has submitted that he is the owner of the Tata Sumo (Spacio) car, bearing Regn.No.AP-03/G-4567 (Engine No.497 SP 26 GZZ 750120 Chassis No.421055 GZZ 916177). The said vehicle was properly registered with the competent Registering Authority, Chittoor, Andra Pradesh and insured with the New India Assurance Co. Ltd., Chittoor Branch and the policy is in force till 09.08.2007. While so, when the vehicle was parked in front of his residence at No.4-1901/2A, Durga Nagar Colony, Chittoor on 17/18.03.2007 night, it was stolen by somebody and in this regard, the petitioner had lodged a complaint with C.C.S. Police Station on 18.03.2007 about the theft of the vehicle. A criminal case was registered under Section 379 I.P.C., in Cr.No.42 of

2007. When the investigation was in progress, the Police received an information that the stolen car with above Engine and Chassis Number has been seized by Odugathur Forest Range, Vellore District in connection with the forest offence, registered in S.T.O.R.No.79 of 2007 on the file of the Judicial Magistrate No.III, Vellore on 23.03.2007, while transporting red sanders by one Thiru.Venkatachalam, S/o. Sundarama Naidu, Katpadi, Vellore District. The said Venkatachalam was arrested by the Forest Officials and produced before the learned Judicial Magistrate-III, Vellore and remanded to the judicial custody. The other persons escaped and obsconded.

3. It is the further case of the petitioner that on receipt of the information dated 29.03.2007, the Inspector of Police, C.C.S. Police station, Chittoor, called him to identify the vehicle at the Forest Ranger's Office, Odugathur Range. On verifying the Engine and Chassis number, he confirmed the identity of the vehicle. It was found that after the vehicle was stolen, the offenders have changed the Registration number of the vehicle as TN-09-L-7707, as if it was registered in Tamil Nadu. The Inspector of Police, C.C.S., Chittoor, has sent a request to the Judicial Magistrate No.III, Vellore on 27.04.2007 to order handing over the said vehicle as an interim custody, either to the C.C.S., Chittoor or to the IVth A.D.M.M., Chittoor, for further investigation. The learned Judicial Magistrate-III, Vellore, made an endorsement that "No such property, i.e., Tata Sumo with Regn.No.AP-03-G-4567 has been received". Thereafter, the Inspector of Police, C.C.S, Chittoor sent a detailed letter dated 10.05.2007 to the learned Judicial Magistrate-III, Vellore, pointing out that the registration number of the vehicle has been changed by the offenders with the Tamil Nadu Registration Number and the Engine and Chassis number remain in tact.

` 4. The petitioner has further submitted that he filed a petition under Section 451 Cr.P.C., before the learned Judicial Magistrate No.III, Vellore, for interim custody of the vehicle bearing Regn.No.AP-03-G-4567, seized in connection with S.T.O.R.No.79 of 2007, on the file of the Forest Range Officer, Odagathur. The said petition was returned on 11.07.2007 with an endorsement that since the property has not been produced before the Court, the petitioner is directed to approach the Forest Range Officer for release of vehicle. Thereafter, the petitioner issued telegram dated 11.07.2007 to the respondents for production of the vehicle before the learned Judicial Magistrate No.III, Vellore and till date, there is no response. Under such circumstances, the petitioner left with no other option, has filed the present writ petition seeking for a direction to release the vehicle.

5. Learned counsel for the petitioner submitted that the petitioner belonged to a reputed family at Chittoor and the seized vehicle was stolen on 17/18.03.2007 and in this regard, a criminal case was also registered in Cr.No.42 of 2007 under Section 379 I.P.C., before the C.C.S. Police Station, Chittoor. He further submitted that after the theft, the offenders have changed the registration number of the vehicle and keeping in tact the Engine and Chassis number of the vehicle. He further submitted that without initiating any proceedings for confiscation of the vehicle, the respondents are wrongly detaining the vehicle in open space since March 2007, due to which, the value and utility of the vehicle are diminishing day by day due to constant exposure to hot sun and intermittent rain.

6. Learned counsel for the petitioner further submitted that the petitioner has no way connected with the transport of red sanders and his vehicle is not involved in any such activity. He further submitted that the petitioner's father is suffering from prolonged illness and he is finding it difficult to take him to the hospital, without the vehicle. In these circumstances, learned counsel for the petitioner prays the vehicle may be released, subject to the conditions to be imposed by this Court.

7. On the other hand, learned counsel for the respondents submitted that the vehicle was inspected on 23.03.2007 and it was found to have indulged in transporting red sanders without permission. In this regard, a case in S.T.O.R.No.79 of 2007 has already been registered and the said vehicle is one of the properties involved in the crime. He further submitted that in view of the change in the

registration certificate, there was some difficulty in issuing notice to the owner of the vehicle under Section 49(b) of the Tamil Nadu Forest Act, 1882. He further submitted that the confiscation proceedings have already been initiated and after completion of the same, appropriate orders would be passed, and prayed that sufficient time may be granted for disposal.

8. Heard both sides.

9. On perusal of the Form-95, Mahazar filed before the Court shows that the vehicle Tata Sumo bearing Regn. TN-09-L-7707 has been shown as one of the properties involved in Crime, S.T.O.R.No.79/2007. Confiscation proceedings have been initiated and a show cause notice dated 13.07.2007, under Section 49(b) of the Forest Act, has been issued to Venkatachalam, S/o. Sundarama Naidu, No.17, Kambar Street, Tharapadavedu, Kadpadi, as to why the vehicle should not be confiscated.

10. Section 49(b) of the Tamil Nadu Forest Act, 1882 reads as follows,
"49-B. Issue of show cause notice before confiscation under Section 49-A:- (1) No order confiscating any scheduled or tools, ropes, chains, boats, vehicles or cattle shall be made under 49-A except after notice in writing to the person from whom it is informing him of the grounds on which it is proposed to confiscate it and considering his objections if any:
Provided that no order confiscating a motor vehicle shall be made after giving notice in writing to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections if any.
(2) Without prejudice to the provisions of sub-section (1) no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49- if the owner of the tool, rope, chain, boat, vehicle, or cattle proves to satisfaction of the authorised officer that it was used in carrying timber without the knowledge or connivance of the owner himself, his agent if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

11. The Supreme Court in State of Karnataka v. K.Krishnan, reported in AIR 2000 SC 2729, in Paragraph 7 of the judgment, held as follows:
"The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence the Authorised Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools boats, vehicles, cattles, etc., used in the commission of the forest offence, which are liable to forfeiture should be released. This however does not debar the officers and the authorities under the Act including the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of the more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. When any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the

vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms. When such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

12. Courts have consistently held that the burden lies on the owner to prove that the vehicle was not used to transport timber without his knowledge or connivence. and it is mandatory on the part of the competent authority, to find out whether the offence was committed along with the vehicle. The Apex Court has held that the provisions of the Forest Act are required to be strictly complied with for the purpose of achieving the object for which, the Act was enacted and any liberal approach would perpetuate the commission of more offences. Release of the vehicle involved in the Forest Act cannot be granted as a matter of routine as the provisions of the Act are to be strictly complied with. Further, I find that no exceptional case has been made for release of the vehicle. As the confiscation proceedings have already been initiated by the competent authority, taking into consideration the plea of the petitioner that he is the owner of the vehicle and that the same had been used in the forest offence without his knowledge and connivence, the Competent Authority-Assistant Conservator of Forest, is directed to issue notice to the petitioner, before deciding the confiscation proceedings, within a week from the date of receipt of a copy of this order. On receipt of the said notice, the petitioner shall raise all his objections and discharge the burden. Upon consideration of all the materials, the competent authority shall pass appropriate orders on merits and in accordance with law, within four weeks from the date of receipt of the objections.

With the above observation, the Writ Petition is disposed of. No costs.

skm Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Forest Range Officer,
Odugathur Range,
Odugathur 632 103,
Vellore District.

2. The District Forest Officer,
Vellore.

+ 1 cc to Mr. M. Ravi, Advocate SR No. 47914

+ 1 cc to the Government Pleader, SR No.47801

NSM(CO)
SR/10.8.2007
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